

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 651 - HB 1156

March 30, 2011

SUMMARY OF BILL: Requires a trial court to adjudge the costs in favor of the prevailing party in all civil actions in which summary judgment is granted, the prevailing party in the trial court also prevails on appeal, or the plaintiff has not employed legal counsel on a contingency fee arrangement. Awards all reasonable litigation costs actually incurred including, but not limited to, reasonable investigation expenses, court reporter expenses, expert witness fees, interpreter fees, guardian ad litem fees, attorney fees, and court costs. Describes prevailing party as the party in whose favor judgment is entered or, in negligence cases, a plaintiff whose negligence is adjudged as less than the defendant's negligence, or a defendant whose negligence is adjudged to be equal to or less than the plaintiff's negligence.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$1,960,000

Increase Federal Expenditures - \$1,293,600

Assumptions:

- According to the Department of Human Services (DHS), the proposed bill will require the state to bear the expense of attorney fees, depositions, and transcription costs when the state is not the prevailing party in a child support enforcement action.
- At the trial level, DHS estimates the Department will not be the prevailing party on one child support case per month per judicial district or approximately 372 cases (12 months x 31 districts) per year.
- DHS estimates 25 attorney hours per case at an estimated hourly rate of \$200, resulting in an increase in state expenditures of approximately \$1,860,000 [(\$200 x 25 hours) x 372 cases].
- DHS has lost eight child support cases in appellate court in the last 12 months. The Department estimates 60 attorney hours from the beginning of action in trial court to the end of appeal at an estimated hourly rate of \$200. The result is a recurring increase in state expenditures of approximately \$96,000 [(\$200 x 60 hours) x 8 cases]. DHS estimates discretionary costs for court reporter fees of approximately \$500 per case resulting in a recurring increase in state expenditures of \$4,000 (\$500 x 8 cases).
- The total recurring increase in state expenditures is \$1,960,000 (\$1,860,000 + \$96,000 + \$4,000).

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- DHS receives federal matching funds at a rate of 66 percent for the Child Support Program. The increase in federal expenditures will be \$1,293,600 (\$1,960,000 x 66%)
- Requiring the court to award all costs and attorney's fees to the prevailing party will increase the risks of litigation, and may result in a decrease in the number of civil actions. This decrease will not have a significant impact on the case load of trial or appellate courts.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/lsc